

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JASON DECESARE,

Plaintiff,

- against -

GREENLIGHT LLC

Defendant.

Docket No. 1:17-cv-9548

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Jason DeCesare (“DeCesare” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant GreenLight LLC (“GreenLight” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of a New York Police Auxiliary Car, owned and registered by DeCesare, a professional photographer. Accordingly, DeCesare seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. DeCesare is a professional photographer in the business of selling and licensing his photographs having a usual place of business at 145 W. Gravers Lane, Philadelphia, Pennsylvania 19118.

6. Upon information and belief, GreenLight is a domestic limited liability company duly organized and existing under the laws of the State of Indiana, with a place of business at 5855 W 74th Street, Indianapolis, Indiana 46278. At all times material hereto, GreenLight has created a limited edition New York Police Department toy car (the “Toy”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. DeCesare photographed a New York Police Auxiliary Car (the “Photograph”). A true and correct copy of the photograph is attached hereto as Exhibit A.

8. DeCesare is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-075-214.

B. Defendant’s Infringing Activities

10. GreenLight copied the Photograph and placed it on the packaging of their Hot Pursuit New York City Police Department Series 13 toy car and also created a replica of the Photograph as a toy car. See Exhibit B.

11. GreenLight did not license the Photograph from Plaintiff, nor did GreenLight have Plaintiff's permission or consent to put the Photograph on its packaging of the Toy nor did they have permission or consent to created a replica of the Photograph as a toy car.

12. GreenLight then distributed the Toy to retail stores for sale.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST GREENLIGHT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. GreenLight infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Toy. GreenLight is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by GreenLight have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant GreenLight be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 5, 2017

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